

the authenticity of the production reports of the insured crop. Master Yields are based on acreage and production history from all acreage of the insured crop in the county in which the operator has shared in the crop's production.

(i) FCIC may use any production report available under the provisions of any crop insurance contract, whether continuous or not, involving the interests of the person's insured crops in determining the approved APH yield.

§ 400.56 Administrative appeal exhaustion.

The insured may appeal the approved APH yield in accordance with the procedures contained in 7 CFR part 400, subpart J. Administrative remedies through the appeal process must be exhausted prior to any action for judicial review. The approved APH yield determined as a result of the appeal process will be the yield applicable to the crop year.

§ 400.57 [Reserved]

Subpart H—Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

AUTHORITY: 5 U.S.C. 1320, Pub. L. 96-511 (44 U.S.C., chapter 35).

SOURCE: 56 FR 49390, Sept. 30, 1991, unless otherwise noted.

§§ 400.65–400.66 [Reserved]

Subpart I [Reserved]

Subpart J—Appeal Procedure

AUTHORITY: 7 U.S.C. 1506(l), 1506(p)

SOURCE: 67 FR 13251, Mar. 22, 2002, unless otherwise noted.

§ 400.90 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Administrative review. A review within the Department of Agriculture of an adverse decision.

Adverse decision. A decision by an employee or Director of the Agency that is adverse to the participant. The term

includes the denial of program benefits, written agreements, eligibility, etc. that results in the participant receiving less funds than the participant believes should have been paid or not receiving a benefit to which the participant believes he or she was entitled.

Agency. RMA or FCIC, including the RO, FAOB or any other division within the Agency with decision making authority.

Appellant. Any participant who requests an administrative review or mediation, or both, of an adverse decision of the Agency in accordance with this subpart. Unless otherwise specified in this subpart, the term “appellant” includes an authorized representative.

Authorized representative. Any person, whether or not an attorney, who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in the administrative review, mediation, or appeal process.

Certified State. A State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 1946, subpart A, or a successor regulation.

FAOB. Financial and Accounting Operations Branch.

FCIC. The Federal Crop Insurance Corporation, a wholly owned Government corporation within USDA.

FSA. The Farm Service Agency, an agency within USDA, or its successor agency.

Good farming practices. For agricultural commodities insured under the terms contained in 7 CFR part 457 and all other crop insurance policies authorized under the Act, except as provided herein, means the good farming practices as defined at 7 CFR 457.8. For agricultural commodities insured under the terms contained in 7 CFR part 407, means the good farming practices as defined at 7 CFR 407.9.

Insured. An individual or entity that has applied for crop insurance or who holds a crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year.

Mediation. A process in which a trained, impartial, neutral third party (the mediator), meets with the disputing parties, facilitates discussions,

§ 400.91

7 CFR Ch. IV (1–1–13 Edition)

and works with the parties to mutually resolve their disputes, narrow areas of disagreement, and improve communication.

NAD. The USDA National Appeals Division. See 7 CFR part 11.

Non-certified State. A State that is not approved by the Secretary of Agriculture to participate in the USDA Mediation Program under 7 CFR part 1946, subpart A, or its successor regulation.

Participant. An individual or entity that has applied for crop insurance or who holds a valid crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year. The term does not include individuals or entities whose claims arise under the programs excluded in the definition of participant published at 7 CFR 11.1.

Reinsured company. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance to participants.

Reviewing authority. A person assigned the responsibility by the Agency of making a decision on a request for administrative review by the participant in accordance with this subpart.

RMA. The Risk Management Agency, an agency within USDA, or its successor agency.

RO. The Regional Office established by the agency for the purpose of providing program and underwriting services for private insurance companies reinsured by FCIC under the Act and for FCIC insurance contracts delivered through FSA offices.

Secretary. The Secretary of Agriculture.

USDA. United States Department of Agriculture.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]

§ 400.91 Applicability.

(a) This subpart applies to:

(1) Adverse decisions made by personnel of the Agency with respect to:

(i) Contracts of insurance insured by FCIC; and

(ii) Contracts of insurance of private insurance companies and reinsured by FCIC under the provisions of the Act.

(2) Determinations of good farming practices made by personnel of the Agency or the reinsured company (see § 400.98).

(b) This subpart is not applicable to any decision:

(1) Made by the Agency with respect to any matter arising under the terms of the Standard Reinsurance Agreement with the reinsured company; or

(2) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and reinsured by FCIC under the provisions of the Act, except for determinations of good farming practices specified in § 400.91(a)(2).

(c) With respect to matters identified in § 400.91(a)(1), participants may request an administrative review, mediation, or both, or appeal of adverse decisions by the Agency made with respect to:

(1) Denial of participation in the crop insurance program;

(2) Compliance with terms and conditions of insurance;

(3) Issuance of payments or other program benefits to a participant in the crop insurance program; and

(4) Issuance of payments or other benefits to an individual or entity who is not a participant in the crop insurance program.

(d) Only a participant may seek an administrative review and mediation under this subpart, as applicable.

(e) Notwithstanding any other provision, this subpart does not apply to any decision made by the Agency that is generally applicable to all similarly situated program participants. Such decisions are also not appealable to NAD. If the Agency determines that a decision is not appealable because it is a matter of general applicability, the participant must obtain a review by the Director of NAD in accordance with 7 CFR 11.6(a) of the Agency's determination that the decision is not appealable before the participant may file suit against the Agency.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]